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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

This document relates to: all actions listed on
Attachment A to this Order

ORDER RE: ELIGIBILITY OF
FIRST ROUND OF PETITIONS
FOR REMAND

Plaintiffs and/or defendants in the cases listed on Attachment A to this Order filed
Petitions for Suggestion of Remand Orders ("Petition") pursuant to Case Management Order
("CMO") No. 17. In accordance with CMO 17, the Court will deem any case in which a
Petition has been filed "eligible for remand" (a) if no written objection was filed within twenty
days of the filing of the Petition or (b) upon the Court overruling any written objection to the
Petition. See CMO 17 at 5. Having reviewed the Petitions filed, along with any objections,
replies, and supporting documents, and being fully advised, the Court finds and concludes as
follows:

A. Unopposed Petitions

The Court did not receive any objections to Petitions filed in the following cases:

02-cv-538 - Rhonda Bailey v. Schering-Plough Healthcare Products, Inc., et al.

1 02-cv-29 – *Eleanor D. Beattie, et al. v. Novartis Consumer Health, Inc., et al.*
 2 03-cv-2102 – *Johnnie C. Bryant v. Novartis Pharm. Corp., et al.*
 3 01-cv-2137 – *Sharon Carter v. Bayer Corp.*
 4 03-cv-2096 – *Janell Fields v. Novartis Pharm. Corp., et al.*
 5 02-cv-373 – *Lynette Fisk, et al. v. Novartis AG, et al.*
 6 02-cv-1863 – *Daniel S. Goettsch v. Smithkline Beecham Consumer Healthcare, et al.*
 7 01-cv-2227 – *Nina Hastings, et al. v. Novartis Corp.*
 8 02-cv-1272 – *Gerald Jones, et al. v. Perrigo Co., et al.*
 9 01-cv-1406 – *Stacey Kerrigan, et al. v. Whitehall-Robins, et al.*
 10 02-cv-420 – *Rose Lynn Kobar v. Novartis Corp., et al.*
 11 03-cv-2097 – *Brenda Lambert v. Bayer Corp., et al.*
 12 02-cv-1020 – *Stephanie Lambert, et al. v. Bayer Corp., et al.*
 13 02-cv-21 – *Ronald Lewis, et al. v. Glaxosmithkline PLC, et al.*
 14 03-cv-2093 – *Barbara Ann Lupo v. Novartis Pharm. Corp., et al.*
 15 02-cv-918 – *Bernadette Massey, et al. v. Sandoz Pharm. Corp., et al.*
 16 01-cv-2167 – *Lurline McKinney, et al. v. Bayer Corp., et al.*
 17 03-cv-1390 – *Sandra Mustoe, et al. v. Bayer Corp., et al.*
 18 02-cv-278 – *Charles Newman, et al. v. American Home Products, et al.*
 19 02-cv-364 – *Lynne Nill, et al. v. Perrigo Sales Corp., et al.*
 20 02-cv-1168 – *Tracy Patton v. Novartis Consumer Health, Inc.*
 21 01-cv-2166 – *Perry Robinson, et al. v. Bayer Corp., et al.*
 22 01-cv-1654 – *Pamela Silvey v. Smithkline Beecham Corp.*
 23 01-cv-1656 – *Bettye Lou Taylor, et al. v. Bayer Corp., et al.*
 24 01-cv-2182 – *John Tutwiler, et al. v. Novartis Consumer Health*
 25 01-cv-1405 – *Alexander P. Ziolkowski v. Novartis Consumer Health, Inc., et al.*

26 Accordingly, the Court deems all of the above cases eligible for remand.

B. Opposed Petitions

1. Discovery Issues:

CMO 17 outlines criteria that must be completed and/or fulfilled before a case will be considered ripe for remand. The CMO requires, *inter alia*, compliance with various CMOs and other Court orders, a substantially complete Plaintiff's Fact Sheet, the execution of all appropriate authorizations, the completion of timely filed discovery, without any remaining unresolved discovery disputes, and the passage of any case-specific fact discovery deadlines.

1 See CMO 17 at 3.

2 The Court received objections relating to discovery in the following cases:

3 02-cv-22 - *Karen Baranowski v. American Home Products*
 4 03-cv-2107 - *Gregory L. Davis v. Bayer Corp., et al.*
 5 03-cv-1396 - *Pam Fort v. Bayer Corp.*
 6 02-cv-371 - *Paul A. Kelley, et al. v. Bayer Corp., et al.*
 7 02-cv-1261 - *Linda King-Corbin, et al. v. SmithKline Beecham Corp.*
 8 02-cv-38 - *Kathlyn Kopecky v. American Home Products*
 9 03-cv-2111 - *Curtis Morris v. Bayer Corp., et al.*
 10 01-cv-2098 - *George Norwood, et al. v. Bayer Corp., et al.*
 11 02-cv-372 - *Lonnie Roberts v. SmithKline Beecham Corp., et al.*
 12 02-cv-1532 - *Maria Ronberg, et al. v. Perrigo, et al.*
 13 01-cv-1655 - *Kimberly Prather Strazis, et al. v. Bayer Corp., et al.*

14 In all of these cases, defendants, and in one instance plaintiff, maintain that some aspect of
 15 discovery remains incomplete. Having considered the objections, the Court finds the above
 16 cases ineligible for remand. These cases will not be considered eligible for remand until the
 17 discovery disputes outlined in the objections have been resolved.¹

18 2. Pending Motions:

19 a. Daubert-related summary judgment motions:

20 Defendants in *Edna Mae Newton v. Bayer Corp., et al.*, No. C03-2113R and *Rosa*
 21 *Richter v. Wyeth, et al.*, No. C03-2100R, object to plaintiffs' Petitions based on pending
 22 motions related to the Court's June 18, 2003 *Daubert* Order. Pursuant to CMO 17, a case will
 23 not be considered ripe for remand until any motions related to the *Daubert* Order have been
 24 ruled upon. See CMO 17 at 4. Plaintiffs note that the cases were ripe at the time the petitions
 25 were filed, given that defendants filed their *Daubert*-related motions on the same day as their

26 ¹ In *Morris v. Bayer Corp., et al.*, No. C03-2111R and *Davis v. Bayer Corp., et al.*, No. C03-2107R, defendant Bayer's objections stem from consortium-based claims filed by the plaintiffs' spouses in Mississippi after the due date for Bayer's objections to the petitions for remand. Bayer has since removed these cases to federal court, filed tag-along notices, and anticipates their imminent transfer into the MDL. Bayer will seek to consolidate the cases upon their transfer due to the derivative nature of the spouses' claims. Because it appears that additional discovery will thereafter be required, the Court finds these cases ineligible for remand at this time.

objections to plaintiffs' Petitions. However, because there is no deadline on the filing of *Daubert*-related motions, and because CMO 17 proscribes remand until the resolution of any such motions, the Court deems these cases ineligible for remand.

b. Other pending motions:

Plaintiffs and defendants in the following cases object to remand based on the existence of pending motions not related to the Court's *Daubert* Order or any ongoing discovery disputes:

01-cv-2026	-	<i>Londell Bell v. Bayer Corp., et al.</i>
03-cv-2104	-	<i>Billie Ray Jackson v. Bayer Corp., et al.</i>
01-cv-2164	-	<i>Elvira S. Quarrels, et al. v. Bayer Corp.</i>
02-cv-904	-	<i>Sharon Roberts-Weisner, et al. v. Whitehall-Robins Healthcare, et al.</i>
01-cv-2172	-	<i>Dennis Romero, et al. v. Bayer Corp.</i>
01-cv-2100	-	<i>Nathaniel Williams v. GlaxoSmithKline, PLC et al.</i>

However, the existence of any type of pending motion does not alone render a case ineligible for remand. See CMO 17 and CMO 10 at 1-2 (indicating that cases will be considered for remand where all motions applicable to discovery have been ruled upon). Accordingly, while the Court may decide to rule on the pending motions, the above cases are eligible for remand.²

3. Subject to Stay:

Defendants in *Chambers v. Chattem, Inc., et. al.*, No. 03-2094R, object to plaintiff's Petition given the stay in all MDL cases with claims as to Chattem Inc. and The Delaco Co. By Order dated December 19, 2003, the Court stayed all cases naming these defendants as parties, including remand of pending cases to the transferor courts. As such, because this case includes Chattem, Inc. as a defendant, it is subject to the stay and ineligible for remand.

DATED this 29 day of January, 2004.


Mary Alice Theiler
United States Magistrate Judge

² In fact, the defendants in *Romero* and *Quarrels* only anticipate filing motions to dismiss, while the defendants in *Williams* have removed plaintiff from a pending omnibus motion to dismiss.

Attachment A

02-cv-538	—	Rhonda Bailey v. Schering-Plough Healthcare Products, Inc., et al.
02-cv-22	—	Karen Baranowski v. American Home Products
02-cv-29	—	Eleanor D. Beattie, et al. v. Novartis Consumer Health, Inc., et al.
01-cv-2026	—	Londell Bell v. Bayer Corp., et al.
03-cv-2102	—	Johnnie C. Bryant v. Novartis Pharm. Corp., et al.
01-cv-2137	—	Sharon Carter v. Bayer Corp.
03-cv-2094	—	Priscilla D. Chambers v. Chattem, Inc., et al.
03-cv-2107	—	Gregory L. Davis v. Bayer Corp., et al.
03-cv-2096	—	Janell Fields v. Novartis Pharm. Corp., et al.
02-cv-373	—	Lynette Fisk, et al. v. Novartis AG, et al.
03-cv-1396	—	Pam Fort v. Bayer Corp.
02-cv-1863	—	Daniel S. Goettsch v. Smithkline Beecham Consumer Healthcare, et al.
01-cv-2227	—	Nina Hastings, et al. v. Novartis Corp.
03-cv-2104	—	Billie Ray Jackson v. Bayer Corp., et al.
02-cv-1272	—	Gerald Jones, et al. v. Perrigo Co., et al.
02-cv-371	—	Paul A. Kelley, et al. v. Bayer Corp., et al.
01-cv-1406	—	Stacey Kerrigan, et al. v. Whitehall-Robins, et al.
02-cv-1261	—	Linda King-Corbin, et al. v. SmithKline Beecham Corp.
02-cv-420	—	Rose Lynn Kobar v. Novartis Corp., et al.
02-cv-38	—	Kathlyn Kopecky v. American Home Products
03-cv-2097	—	Brenda Lambert v. Bayer Corp., et al.
02-cv-1020	—	Stephanie Lambert, et al. v. Bayer Corp., et al.
02-cv-21	—	Ronald Lewis, et al. v. Glaxosmithkline PLC, et al.
03-cv-2093	—	Barbara Ann Lupo v. Novartis Pharm. Corp., et al.
02-cv-918	—	Bernadette Massey, et al. v. Sandoz Pharm. Corp., et al.
01-cv-2167	—	Lurline McKinney, et al. v. Bayer Corp., et al.
03-cv-2111	—	Curtis Morris v. Bayer Corp., et al.

Attachment A

03-cv-1390	—	Sandra Mustoe, et al. v. Bayer Corp., et al.
02-cv-278	—	Charles Newman, et al. v. American Home Products, et al.
03-cv-2113	—	Edna Mae Newton v. Bayer Corp., et al.
02-cv-364	—	Lynne Nill, et al. v. Perrigo Sales Corp., et al.
01-cv-2098	—	George Norwood, et al. v. Bayer Corp., et al.
02-cv-1168	—	Tracy Patton v. Novartis Consumer Health, Inc.
01-cv-2164	—	Elvira S. Quarrels, et al. v. Bayer Corp.
03-cv-2100	—	Rosa Richter v. Wyeth, et al.
02-cv-372	—	Lonnie Roberts v. SmithKline Beecham Corp., et al.
02-cv-904	—	Sharon Roberts-Weisner, et al. v. Whitehall-Robins Healthcare, et al.
01-cv-2166	—	Perry Robinson, et al. v. Bayer Corp., et al.
01-cv-2172	—	Dennis Romero, et al. v. Bayer Corp.
02-cv-1532	—	Maria Ronberg, et al. v. Perrigo, et al.
01-cv-1654	—	Pamela Silvey v. Smithkline Beecham Corp.
01-cv-1655	—	Kimberly Prather Strazis, et al. v. Bayer Corp., et al.
01-cv-1656	—	Betty Lou Taylor, et al. v. Bayer Corp., et al.
01-cv-2182	—	John Tutwiler, et al. v. Novartis Consumer Health
01-cv-2100	—	Nathaniel Williams v. GlaxoSmithKline, PLC et al.
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